

LAW FOR ASPHALT ATHLETES



*A Legal Guide for Hikers, Runners
and Bicyclists*

Kentucky Edition

Copyright 1983 by Laurence W. Knowles and Ronald W. Eades.

LAW FOR ASPHALT ATHLETES

**A Legal Guide for Hikers,
Runners and Bicyclists**

By Ronald W. Eades and
Laurence W. Knowles
Professors of Law
University of Louisville
School of Law

Illustrated by Marc Murphy

LAW FOR ASPHALT ATHLETES

Legal Guide for Athletes
Injuries and Accidents

By Donald W. Davis and
Lawrence W. Davis
Attorneys at Law
University of Louisville
School of Law

Illustrated by Peter Steinhilber

Table of Contents

Introduction

Fun and Survival in the Asphalt Arena	1
A Word About Running and Biking Equipment	3
If the Shoe Fits, Wear It; If the Shoe Doesn't Fit?	
The Medical Examination and Duties of Doctors	6
Get It Checked Before Putting It On the Road; You Get	
What You Pay For; Brag About Your Program!	

Law for Hikers, Joggers, and Runners

Jogger, Runner, Racer = Pedestrian	8
Your Turf; Where to Run	10
On the Road; On the Sidewalk;	
On Someone Else's Property	
Close Encounters of the Canine Kind	17
Self Defense; Does Every Dog Get One Bite? But. . .	
Races	20
The Thrill of Competition; Race Sponsor Responsibility;	
The Race Waiver; Spectators	

Bicycle Laws

Welcome to Life in the Slow Lane	23
Federal Laws; State Laws; Local Ordinances	
What is a Bicycle and, besides, Who is a Bicyclist?	25
What the Legally Dressed Bike Will Wear:	27
Federal Safety Standards; State Regulations	
Your Turf; Where Bicycles May Be Ridden	30
Limited Access Highways (Expressways and Interstates);	
Sidewalks	
The Rules of the Road	32
Rendering Unto Caesar; Doing Unto Others; Doing the	
"Right" Thing; Rites of Passage; The Moment of	
Truth—Turning Left; One Good Turn Deserves Another;	
Right Turns, U-Turns and Stops; Racing; Clinging to	
Vehicles; Too Many On A Bicycle; Above and Beyond	
the Law	
Miscellaneous:	38
Parking; Accident Reports; Insurance	
Afterword	40
Legal Sources and References	41
Acknowledgements	45

Table of Contents

Introduction

First and foremost, I am grateful to the people of the world who have made this book possible. I want to thank the many people who have helped me in the past, and I hope to help others in the future. The book is a collection of stories and poems that I have written over the years. I hope you will enjoy reading it as much as I enjoyed writing it.

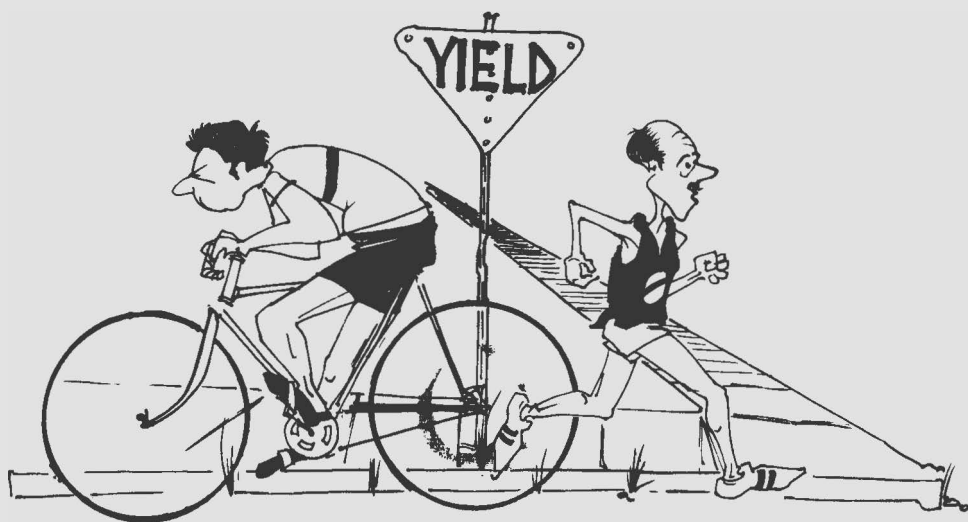
Part I: History, Legend, and Romance

1. The Story of the World
2. The Story of the World
3. The Story of the World
4. The Story of the World
5. The Story of the World
6. The Story of the World
7. The Story of the World
8. The Story of the World
9. The Story of the World
10. The Story of the World

Part II: The World

1. The World
2. The World
3. The World
4. The World
5. The World
6. The World
7. The World
8. The World
9. The World
10. The World
11. The World
12. The World
13. The World
14. The World
15. The World
16. The World
17. The World
18. The World
19. The World
20. The World
21. The World
22. The World
23. The World
24. The World
25. The World
26. The World
27. The World
28. The World
29. The World
30. The World
31. The World
32. The World
33. The World
34. The World
35. The World
36. The World
37. The World
38. The World
39. The World
40. The World
41. The World
42. The World
43. The World
44. The World
45. The World
46. The World
47. The World
48. The World
49. The World
50. The World
51. The World
52. The World
53. The World
54. The World
55. The World
56. The World
57. The World
58. The World
59. The World
60. The World
61. The World
62. The World
63. The World
64. The World
65. The World
66. The World
67. The World
68. The World
69. The World
70. The World
71. The World
72. The World
73. The World
74. The World
75. The World
76. The World
77. The World
78. The World
79. The World
80. The World
81. The World
82. The World
83. The World
84. The World
85. The World
86. The World
87. The World
88. The World
89. The World
90. The World
91. The World
92. The World
93. The World
94. The World
95. The World
96. The World
97. The World
98. The World
99. The World
100. The World

101. The World
102. The World
103. The World
104. The World
105. The World
106. The World
107. The World
108. The World
109. The World
110. The World
111. The World
112. The World
113. The World
114. The World
115. The World
116. The World
117. The World
118. The World
119. The World
120. The World
121. The World
122. The World
123. The World
124. The World
125. The World
126. The World
127. The World
128. The World
129. The World
130. The World
131. The World
132. The World
133. The World
134. The World
135. The World
136. The World
137. The World
138. The World
139. The World
140. The World
141. The World
142. The World
143. The World
144. The World
145. The World
146. The World
147. The World
148. The World
149. The World
150. The World
151. The World
152. The World
153. The World
154. The World
155. The World
156. The World
157. The World
158. The World
159. The World
160. The World
161. The World
162. The World
163. The World
164. The World
165. The World
166. The World
167. The World
168. The World
169. The World
170. The World
171. The World
172. The World
173. The World
174. The World
175. The World
176. The World
177. The World
178. The World
179. The World
180. The World
181. The World
182. The World
183. The World
184. The World
185. The World
186. The World
187. The World
188. The World
189. The World
190. The World
191. The World
192. The World
193. The World
194. The World
195. The World
196. The World
197. The World
198. The World
199. The World
200. The World



INTRODUCTION

Fun and Survival in the Asphalt Arena

The streets are a continuing contest among users. Automobiles, bicycles and joggers compete for the same space, and compete is not an inaccurate word. Indeed, the same person may jog, drive, and bike all in one day, for health, convenience, or just fun. And his attitude towards fellow travellers may change dramatically according to how he is travelling. Cars are bigger than bikes, bikes are more dangerous than pedestrians, but all are in the same boat, or road.

In addition to the safety aspects of knowing and obeying the rules of the road, there are important legal reasons to follow those rules. The rules are literally the rules of the game. Violators may be penalized by fine if caught. But a fine is the least that can befall a law violater. If the violater injures someone while breaking the law, the violater will generally be responsible for *all* medical expenses and other losses suffered by his victim.

There is another, even worse legal consequence for the law-breaking jogger or biker. If the athlete is breaking the law and is injured by a motorist, he may not recover any damages. The theory is since the biker or jogger is partially to blame for his own injuries he has no grounds to complain. This is true even if the biker or jogger is only a little negligent and the motorist is mostly at fault! This is the law in many states, and in Kentucky.

This is a dangerous book. It is going to tell you of your rights as a jogger or a bicyclist when using the public streets and sidewalks of Kentucky. But cars are still bigger than you when you're running or cycling. So, after you learn your rights, exercise them with the greatest personal care. Ties lose in your case.

On the other hand, we have written this book for car and truck drivers. They need to know your rights also. Maybe you would be doing everyone a favor by passing this book on to a motorist friend.

A Word About Running and Biking Equipment

If the Shoe Fits, Wear It

Once someone decides to begin an exercise program, one of his or her first stops is at a running, bicycle, or general sporting goods store. At that friendly establishment there is an amazing array of equipment for the asphalt athlete. Shoes, socks, bikes with five speeds, ten speeds, twelve speeds, shorts, shirts, vitamin supplements, log books, and even law books are just a few of the items available. Avoid being overwhelmed by the bright colors, exotic names, and shining nylon. Instead, try to buy good solid equipment. This is most easily done by shopping at respected, reputable stores. Such stores will help you in your selection and remain helpful if your selection turns out defective. If, however, your selection turns out to be defective and the store owner acts like he never saw you before, you may have some legal rights. This area of the law is very complex. If you suffer serious injury from some product, you should take both yourself and the product to a lawyer to seek assistance.

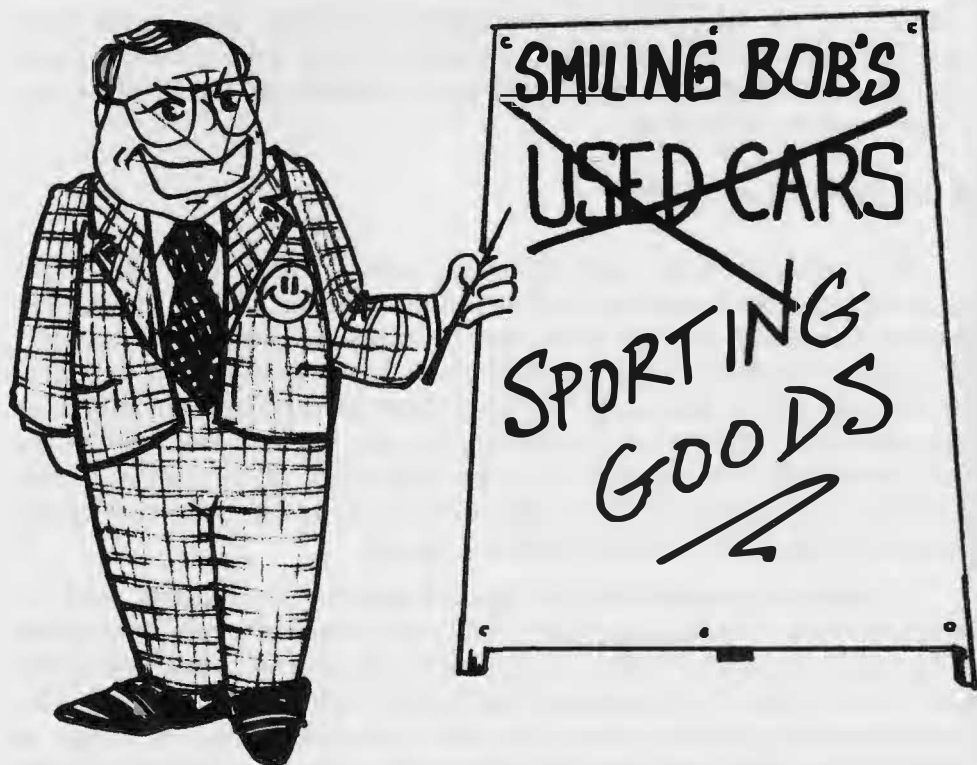
If the Shoe Doesn't Fit?

If a product turns out defective, many stores will make adjustments in order to assure good customer relations. It is the store that refuses help that can cause problems. Most states recognize that manufacturers, wholesalers, and retailers must use reasonable care in producing and selling the goods. If any of those involved can be shown to have failed to follow that standard, they can be held responsible for any injury they have caused. This area of the law is, of course, called the law of negligence and Kentucky allows the injured consumer to sue anyone in the chain of distribution of goods.

A second responsibility that manufacturers, wholesalers, and retailers have is to speak truthfully. If any of those make promises about the product, they may be held responsible for injuries to the user or for the reduced value of the product itself if the statement is not true. The asphalt athlete should notice that the "promise" may be made in several ways. Obviously express statements of fact are binding on the seller. But other actions may be seen as "promises." If the product was

purchased from a description in a catalog or by looking at samples, the purchased item must be like those descriptions or samples. These principles are almost universally recognized and clearly followed in Kentucky.

A third important concern is referred to in law as an implied warranty. Most states recognize this doctrine and hold manufacturers, wholesalers, and retailers responsible for it. Interestingly enough there are two types of implied warranties. The first type requires that the product be generally acceptable as is. This means the product should be of at least fair, average quality and of the type expected to be found on the market. This implied warranty rule means that the sole shouldn't fall off a running shoe a short time after purchase. And that the handle bars on a new bicycle shouldn't bend when held firmly. What an average person thinks he sees is what he should get. If the product is defective due to the fault of the manufacturer, he must sue the manufacturer. But if for some reason the manufacturer is not available for a law suit in Kentucky, he can sue the retailer and wholesaler, who are then responsible for paying the damages.



The second type of implied warranty presents the type of problem more likely to be encountered by the amateur athlete. If the customer explains his intended use of the goods to the seller and relies upon the seller's special knowledge and advice in making his selection, there is an implied warranty that the product purchased is fit for the buyer's particular purpose. Although no reported cases have specifically covered bicycles or running shoes, these items present a good illustration of this area of the law. For example, suppose a jogger told a shoe store salesperson that the jogger did a lot of running on wet and slick streets and wanted shoes that would be safe under those conditions. If the salesperson selected shoes that were unsuited for slippery surfaces, the store would be responsible for replacing the shoes. If injury resulted from a slip, the store would be responsible for the jogger's injuries. Again, if a runner or cyclist informed the seller of a need for high mileage in his sport and the seller recommended a specific product, that product ought to be fit for the mileage expected. If the bicycle or shoes were later determined to be inadequate for that mileage, the seller would be responsible. The lesson should be clear here. If a novice runner or biker isn't familiar with the products, he should ask. And when asking he should be sure to state his particular needs. If he did in fact rely upon the seller's advice and is legitimately disappointed in the product, he can probably hold the seller liable.

Finally, dangerous products are in a class by themselves. If the purchased product is defective and so dangerous that a consumer should not purchase it or a seller should not sell it, the manufacturer, wholesaler, and retailer may be responsible for any injuries the product causes. This responsibility will attach even though the manufacturer or seller are absolutely innocent of any wrong-doing or negligence. The law will hold them *strictly liable* without fault. An example of such a product might be a bicycle so defective in its design (such as having brakes that fail when wet) that it creates a serious risk of injury to the operator. Even runners may confront extremely dangerous products. A T-shirt that bursts into flames from a spark has been recognized in Kentucky as a product too dangerous to be on the market.

The Medical Examination and Duties of Doctors

Get It Checked Before Putting It On the Road

Almost every exercise book, manual, or magazine begins with the same advice. They all suggest a visit to a physician for a physical examination before beginning a program of vigorous exercise. The American Heart Association, while recommending exercise, also recommends being evaluated by a physician before beginning an exercise program. With this clear encouragement to seek help from a physician before beginning a program, a simple question arises. What responsibilities or duties does the doctor owe to the future asphalt athlete?

You Get What You Pay For!

First, the doctor owes no duty at all until a patient-physician relationship is formed. Mere curbside advice where the athlete asks for a little advice from a doctor friend or acquaintance at a party or even during a run does not give the athlete any special rights. In short, the doctor can be dead wrong and not be liable. In order for the proper relationship to exist, both the patient and doctor must knowingly intend to enter into such a relationship. This is probably going to mean a person must make an appointment and see the doctor in his office. Once the patient-physician relationship is formed, the doctor does owe a substantial duty to the patient. Most states would define this duty by saying that the doctor has to use the reasonable care of the average physician in good standing in the community. The duty does not require that the



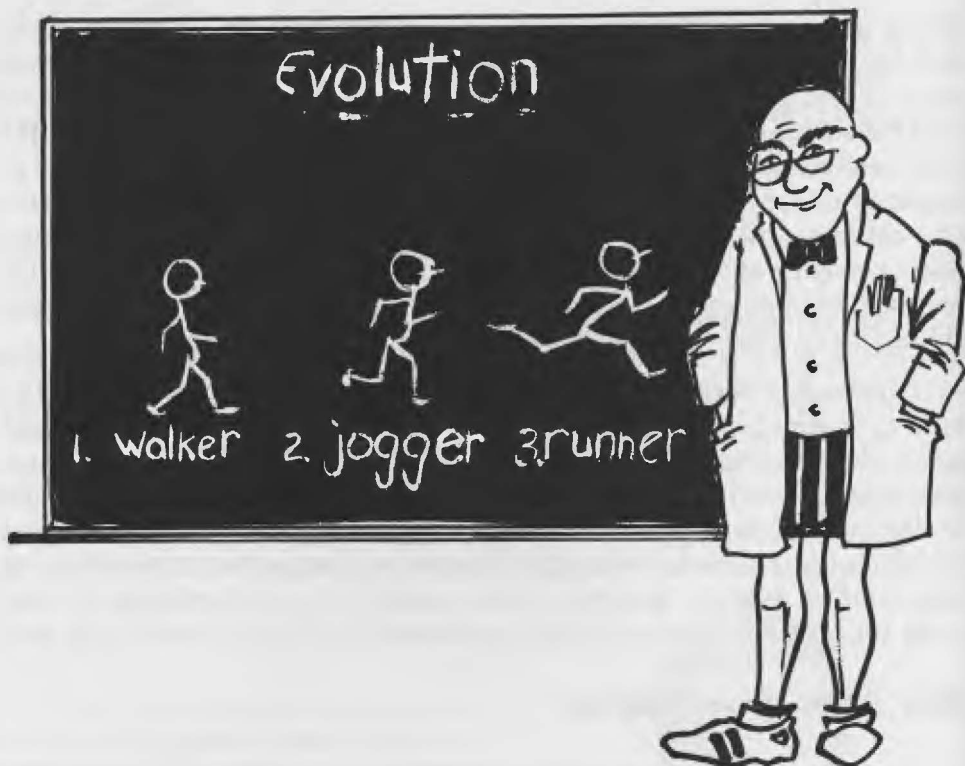
doctor guarantee his results or that he always be right. It just requires that he gives the same quality of treatment one would expect from most of the good doctors in the community. This reasonable care is also based upon the circumstances of each patient. The doctor might well perform reasonably by giving a short, routine examination if he is unaware of the intended exercise. However, if he is informed of planned exercise, he must be more careful. Additional and more complex testing may be appropriate. The American Heart Association, for example, has recommended that some people planning an exercise program should have their heart tested while exercising in a stress test.

Kentucky follows the general rules set out above. If the physician fails to maintain these standards, the athlete-patient may recover the costs of any medical problems which develop as a result of the improper diagnosis, advice, or treatment. If, for example, the doctor fails to discover medical problems already being suffered by the patient and which could be made worse by exercise, advising the athlete that he may start an exercise program could result in the doctor being responsible for any aggravation of the problem.

Brag About Your Program!

In light of the special reason the prospective athlete is going to the doctor, some responsibility rests on the athlete also. The patient needs to explain exactly why he wants a physical examination. Informing the doctor that the patient intends to begin a vigorous exercise program will lead the physician to perform additional tests not otherwise called for in a run-of-the-mill check up. Courts in Kentucky have gone as far as to hold that failure of the patient to give the physician complete and accurate information could relieve the doctor of responsibility. Even failure to give a complete medical history or names of drugs being taken could relieve the physician of responsibility.

Finally it should be noted that once this patient-physician relationship begins, it may continue indefinitely. Kentucky has recognized that as long as the relationship exists, the physician must continue to exercise reasonable care in the testing, advising, and treating his asphalt athlete-patient. Regular physical examinations will produce many benefits. This is especially true if complete information about the patient's current exercise program is given to the doctor on each visit. This will keep the athlete healthy and on the road. It will also alert the doctor to any problems as soon as they arise.



LAW FOR HIKERS, JOGGERS, AND RUNNERS

Jogger, Runner, Racer = Pedestrian

Runners may frequently debate whether they are “joggers,” “runners,” or “racers.” Most feel that somehow being classified in one group or another adds status or dignity to the daily outing on the roads. Many will be both hurt and offended to find out that in the eyes of the law they are grouped with “walkers” and generally called “pedestrians.” Most states, including Kentucky, define pedestrians as meaning “any person afoot.” As so defined, the law concerning pedestrians sets the rules and regulations for joggers. At first blush it appears, therefore, that all laws governing pedestrians govern runners also. But like so many things in this area of the law, it is not absolutely clear. The reasons follow.

Kentucky does have statutes covering pedestrians. But some statutes not only specify pedestrians, but go on to cover where they should walk! For example, an important Kentucky statute dictates that if a sidewalk is available it is unlawful for a “pedestrian to walk along . . .

[the] roadway.” Since runners are “afoot” they are pedestrians. They obviously, however, do not walk. Clearly an argument can be made that this statute should not apply to a jogger. Indeed, in one case in Akron, Ohio, a jogger was arrested for running along the road where a sidewalk was available. Akron had an ordinance similar to the Kentucky statute mentioned above. The jogger had been told several times by a police officer to do his running on the sidewalk, but the sidewalk was not in good repair and the jogger continued to use the road. Finally the officer arrested the jogger. Since the statute prohibited “walking” in the road the jogger argued he was not guilty. After all, he had not been walking; he had been running. The court consulted a dictionary to compare the words “run” and “walk.” The court then held that running was sufficiently different from walking that it was not covered by the statute! Although the defendant could be arrested for walking in the road, it was not proper to arrest him for running in the road.

The Ohio case is probably a fluke. Clearly the same safety concerns about persons walking in the road apply equally to persons running in the road. Consequently, even though the statute says “walking” a Kentucky court will probably decide that the law applies to joggers also. Indeed, one case in North Carolina assumed without even discussing the matter, that running was the same as walking when it was done on the wrong side of the road.

In conclusion, it appears that the person afoot is a pedestrian for all purposes. Even though some rules are expressed in terms of walking, the same principles will probably control running.

Your Turf: Where to Run

As previously discussed, we will assume that although runners may pass walkers with speed and style, the law for both is the same. The important provisions of the Kentucky state law for pedestrian travel are as follows:

Pedestrians shall obey the instruction of any official traffic control devices specifically applicable to them, unless otherwise directed by a police officer or other officially designated persons.

Whenever traffic is controlled by traffic-control signs [the signals] apply to pedestrians as follows:

Green indication.

Unless otherwise directed by a pedestrian signal, pedestrians facing any green signal, except if the sole green signal is a turn arrow, may proceed into the roadway within any marked or unmarked crossing.

Yellow indication.

Pedestrians facing a steady yellow signal and not otherwise directed by a pedestrian-control signal, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian shall then start to cross the roadway.

Red indication.

Unless otherwise directed by a pedestrian-control signal, pedestrians facing a steady red signal alone shall not enter the roadway.

When [at crosswalks] traffic control signals are not in place or in operation the operator of a vehicle shall yield the right of way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

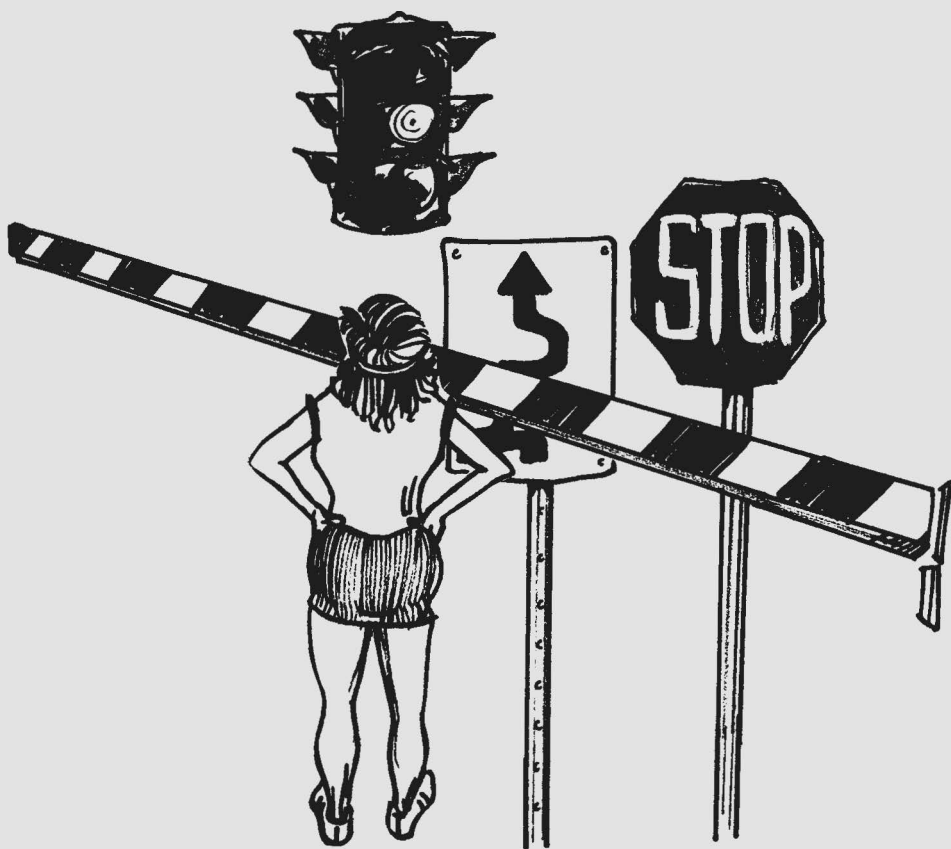
Every pedestrian crossing a roadway at a point other than within a marked crosswalk or within an unmarked crosswalk at

an intersection shall yield the right of way to all vehicles upon the roadway.

Between adjacent intersections within the city limits of every city at which traffic control signals are in operation, pedestrians shall not cross at any place except in a marked crosswalk.

. . .[E]very operator of a vehicle shall exercise due care to avoid colliding with any pedestrian and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing a child or an obviously confused or incapacitated person upon a roadway.

The operator of a vehicle shall yield the right of way to any pedestrian on a sidewalk.



No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close as to constitute an immediate hazard.

Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

Where a sidewalk is provided and its use is practicable, it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway.

Where a sidewalk is not available, any pedestrian walking along and upon a highway shall walk only on a shoulder, as far as practicable from the edge of the roadway.

Where neither a sidewalk nor a shoulder is available, any pedestrian walking on or along a highway shall walk as near as practicable to an outside edge of the roadway, and, if on a two-way roadway shall walk only on the left side of the roadway.

Except as otherwise provided in this chapter, any pedestrian upon a roadway shall yield the right of way to all vehicles upon the roadway.

A careful reading of the Kentucky statutes will leave little doubt as regards the rules on pedestrian travel. Incidentally, the fine for violation of these rules is \$20 to \$100. In reviewing Kentucky law regulating pedestrians on roadways, some general principles arise. The primary one is: Unless a runner has to be on the road, he must stay off of it. Secondly, except for crosswalks, vehicles, not pedestrians have the right of way on roadways. A brief summary is in order.

On the Road

Although most joggers prefer to run on smooth asphalt roads rather than cracked concrete sidewalks, it is simply against the law to do so in many instances. If there is a sidewalk available, it is unlawful for the runner to be along or upon the roadway. Where there is no sidewalk, the runner can take to the roadway. He should be on the shoulder of the road if a shoulder is available. If no shoulder is available, he should be as close to the edge of the road as possible. If the runner is using the roadway, he should be on the left side of the road. Indeed, the statute requires him to be as near as practicable to the outside edge of the road. This requirement would seem to prohibit running two or more abreast, since each runner must be as close to the edge of the road as practicable. This will allow the jogger to run facing traffic. The reason for this rule should be obvious. Running facing traffic makes on-coming cars easier to see and the runner can get out of the way. Indeed, the law requires him to yield to traffic.

These regulations are designed to help the runner avoid injury. They do not automatically give him legal rights if he gets run over. The

laws in most states and Kentucky indicate that while on the roadway, automobiles have the right of way. Even though the runner may be on the far left hand edge of the road, he must still be careful. The runner should keep a close watch for approaching cars.

In setting rules for crossing streets, most states have the same rules as Kentucky. Kentucky requires primarily that the crossing signals and police officers be obeyed. This is the easy part. The problems arise when there are no signals. Kentucky like many states provides that within city limits, streets should only be crossed within crosswalks. Consequently, when crossing within a crosswalk, the jogger has the right of way. When crossing outside a crosswalk, the automobile has the right of way. Failure of the motorist to follow those rules may lead to liability for any injury done. Failure of the jogger to obey those rules may not only result in great injury, he may not be able to successfully sue for injuries because he was at fault.

The law also has a specific section which may affect runners. No person can suddenly leave a curb and run in front of a car. The word "run" is specifically used in the statute! Here again, runners should be careful in crossing roads. A motorist may be familiar with the pace of a casual walker approaching and crossing a street. In contrast, runners may appear to a motorist to come from nowhere and suddenly be in the roadway. Runners should approach crosswalks carefully and cross only when safe. This practice may break their stride but it won't break their bones.

On the Sidewalk

If after reading the previous section, the jogger decides he belongs on a sidewalk, some additional concerns arise. Sidewalks tend to crack



and get holes in them. Injured feet, ankles, or knees as a result of tripping on a crack may lead the runner to look for someone to pay his doctor bills. Less likely, but equally dangerous, if a local resident litters or otherwise obstructs his sidewalk, is he responsible for resulting injuries?



For maintenance of the sidewalk itself, that duty usually falls upon the city. Public sidewalks which do not directly serve a private entrance are generally supposed to be maintained by the local government. This duty does not mean that the government must keep the sidewalk absolutely perfect, but only keep it reasonably safe. Kentucky follows these general principles on sidewalk maintenance. The local government has the responsibility to keep sidewalks reasonably safe. They do not have to use extraordinary efforts to repair every slight defect. Small cracks or slight variations in the height of sidewalk sections would probably be viewed as within reason.

When local residents obstruct or damage the sidewalks, they may have some liabilities. Obviously, if they built and maintained the sidewalk for their private gain, they must use care to maintain it properly. A business that builds sidewalks near, around, or leading to their establishment will be responsible to maintain them. The greater problem arises however, when in fact, householders do something to obstruct a publicly maintained sidewalk. Residents do have a duty to refrain from obstructing a sidewalk. Most states generally require residents to use reasonable care to keep sidewalks clear. In Kentucky, this

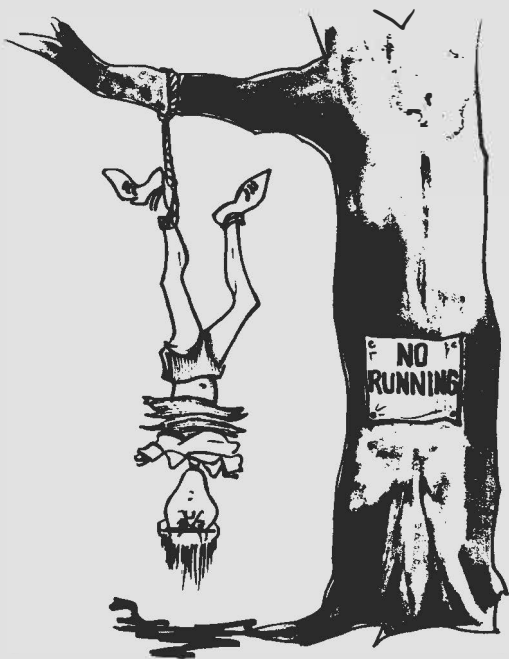
theory is followed and householders must use ordinary care to assure that their property does not, by being on the sidewalk, injure someone. Allowing pieces of fence, overhanging awnings, ladders, bricks, or trash deposits to clutter and obstruct a sidewalk could make the resident responsible for any injuries caused by those items.

It must be remembered, of course, that the jogger must also take care of himself. Just because the city or a local householder may have a duty to keep sidewalks safe does not mean the runner can ignore hazards. As with other injuries most jurisdictions will deny recovery if the runner fails to keep a proper lookout. In Kentucky the courts have held that people using a public sidewalk must use ordinary care for their own safety.

On Someone Else's Property

Leaving public roadways and sidewalks to run on private property presents a whole new set of challenges and, as would be expected, a whole new set of rules. First, and most obvious, the jogger who runs on private property may be a trespasser. The common law rule is if someone goes on private property without permission, they become trespassers and are held liable for any damage done whether it is their fault or not! Kentucky recognizes this law of trespass and would similarly hold a trespasser responsible for any damage done.

In addition, a runner who trespasses on another's property must take that property as he finds it. He runs there completely at his own risk. A runner can expect that public sidewalks and roadways will be properly maintained, but he can have no such expectations while trespassing on private property. In Kentucky a landowner owes no duty to keep property safe for trespassers. That landowner may not, however, do anything to intentionally injure a trespasser. Just because a jogger is on someone's property without permission does not mean that he can be hurt. The owner of the property cannot set traps or in anyway try to harm the runner.

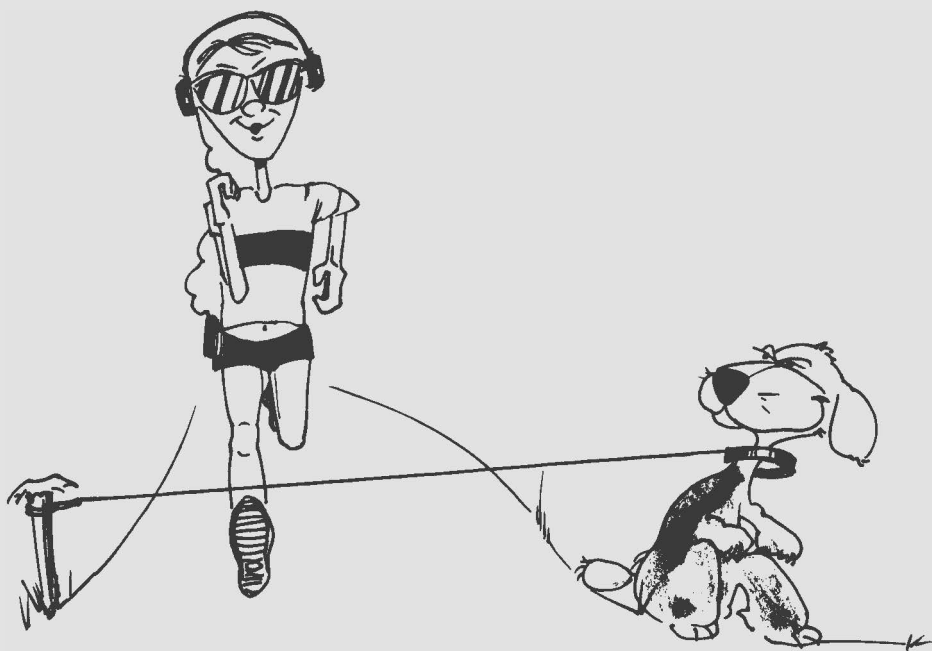


If the runner comes onto the land with permission of the owner, the principles begin to change. In most states, if the runner is on the property with permission the landowner would be required to at least warn him of known, hidden dangers.

Kentucky law appears to differ from the general rules when a runner is on private property with permission. When an owner allows recreational use of his property, Kentucky has a special statute which minimizes the duties owed by the landowner. The statute provides that the owner owes no duty to make the property safe or warn of dangers to those who are permitted on his property for recreation. It appears that the statute was intended primarily to encourage landowners to provide forest and rural areas for hiking and camping. Although running or jogging is not specifically mentioned as a recreational use, the statute is broad enough to include it. Schools, parks, private individuals and others who open their facilities to public use will probably find themselves covered by the statute.

The final issue is the duty of the person who charges a fee for those using his property for recreation. The law here requires him to use reasonable efforts to keep his property safe for the paying guest.

As in all cases, the jogger must take responsibility for himself. In most jurisdictions, failure to use reasonable care for his own safety will relieve a landowner of liability for any injury the runner suffers. Kentucky follows this principle and has included it in the statute mentioned above.



Close Encounters of the Canine Kind

If you ask a jogger who is man's best friend, you may get an argument. If there is one fear that confronts all runners, it is the fear of being bitten by a dog. Every runner has experienced being chased by one, two, or a pack of dogs. And needlessly so. A loose dog is most likely an illegal dog (if there is such an animal). More specifically, most states and local communities have "leash laws" that require that dogs be confined or otherwise controlled. Indeed, Kentucky has a state statute that requires that dogs, with the exception of hunting dogs, be confined at night. In fact, a police officer who finds a dog running loose at night is authorized by law to destroy it! [The authors suggest that this may be, literally, overkill.] Many local communities in Kentucky have laws requiring dogs to be kept enclosed or on a leash at all times. The city of Louisville, for example, has specific local ordinances that regulate dogs. Owners may not allow their dogs to run at large at anytime and if the dog is in a public area, it must be on a leash. For information about ordinances in other municipalities, a concerned jogger should contact the local government officials. And, in any event, any dog that is a constant threat on a jogger's daily run should be brought to the attention of law enforcement officials.

Self Defense

Carrying some weapon or device for self protection presents some difficult questions. As any runner knows, carrying anything is unpleasant while running but serious legal problems may arise when the object is dangerous. Most states, and Kentucky, make it a crime to carry concealed weapons. The definition of a weapon may include not only a gun but a knife, blackjack, club or mace. Although no Kentucky cases have specifically dealt with runners, the carrying of a defense item could make the weekend jogger a criminal in the eyes of the law. Great care and some specific legal advice should be sought before deciding to carry a defensive weapon on daily outings.

Does Every Dog Get One Bite?

If the leash laws and self defense fail and the jogger is bitten, does the bittee have any rights? Or, restated, if you can't sue the dog, who can you sue? The rule is easier to state than apply. The rule is an owner of a dog may be held liable for injuries caused by his dog. But imposing this responsibility is not automatic. Many states impose what is called a "scienter" rule. This rule means that if a dog bites someone, the owner is held responsible only if the owner knew the dog was vicious. For example, if the dog had bitten someone before, the owner would or should know the dog was vicious. Consequently, he would be liable for any subsequent bites. This idea has led to a frequently stated but obvious oversimplification that, "every dog is entitled to one bite." Proving the owner had knowledge that the dog was vicious poses no problem if the dog has already taken his "first bite," but that knowledge can be proven in other ways. For example, evidence that a dog is kept for watchdog purposes or tends to chase people, may be sufficient. Happily, Kentucky has apparently abolished the "scienter" rule. There is a statute in Kentucky which simply imposes liability on owners of dogs for injury to persons. This statute on its face appears to remove the requirement of knowledge of vicious behavior, or "scienter."



But . . .

The runner must also watch out for himself. The courts will absolve the dogowner of responsibility if the bitten person brought the injury upon himself or could have avoided it. In Kentucky a court would consider whether a person jogged too close to a chained-up dog, or otherwise taunted it in determining who was at fault. An interesting, if somewhat bizarre example, arose in a Louisiana case. A jogger was running on a high school track while a boy and his unleashed dog played nearby. The dog ran out to the jogger several times to lick him. On one such occasion the jogger did not see the dog, the dog ran between his feet, and the jogger fell. The jogger sued, claiming the boy and his family violated a local leash law. The court held that leash laws were not passed to prevent dogs from tripping people but were actually designed to prevent bites. In addition the court stressed that the adult jogger should have looked after himself and, in not doing so, shared the responsibility for his injury.



Races

The Thrill of Competition

After a period of daily running most joggers, at some point, will decide they want to enter a road race. There are many such races sponsored throughout the country ranging in distances from one mile fun runs to 100 mile ultra-marathons. Entering such a race raises some legal questions.

The first problem one could encounter is whether they are even allowed to enter the race. Most races are open to anyone willing to pay the entry fee. These typically allow men and women runners and wheelchair participants. At least one case, however, has discussed the problem of a wheelchair participant being refused the opportunity to enter such a race.

An individual confined to a wheelchair sought entry in the 1978 New York City Marathon. When he was denied entry he sued the race sponsors. The court held that the race did not have to allow wheelchair participants. The race was a foot race and required participants to compete on foot. The court noted that wheelchairs could be excluded just as bicycles or skateboards could be excluded from the foot race.

Race Sponsor Responsibility

The second and more obvious problem is the responsibility of race sponsors for injuries to the participants of the race. The issue of a runner being injured and then suing the race sponsor rarely comes up. Most states recognize general principles of negligence and require people to act reasonably. In addition if an injured person failed to use reasonable care for his own safety during a race any action against the sponsors would be defeated. Although Kentucky has had no cases reported where a road racer has sued a race sponsor these general principles would apply. The race sponsors must use reasonable care to make the race safe and runners must use reasonable care for their own safety.

The Race Waiver

In order to avoid the possibility of being sued, most race sponsors throughout the country require the racer to sign a waiver of all liability in order to participate in the race. A case in Georgia reviewed one such waiver. The runner, a phi beta kappa college graduate entered the 1977 Peachtree Road Race and signed the waiver. During the 10 K race on July 4, 1977 in Atlanta, he collapsed and had to be hospitalized. He sued the race sponsors claiming they were negligent in not giving adequate warnings, adequate water during the race, nor adequate tests of the physical ability of entrants to enter the race. The court did not allow him to recover. The case noted that the runner had waived his right to sue. In addition the application warned of the heat, humidity, hills, and need for physical training. It was also noted that the runner was familiar with the weather in Atlanta.

Kentucky has not had a reported case which specifically tested the validity of a road race waiver. The courts have, however, decided a case involving a similar waiver, and that case may present some difficulty for Kentucky race sponsors. In a case where a woman signed a waiver when she entered a hospital, the court held the waiver to be invalid. The case held generally that attempts by people to avoid responsibility for their action by forcing others to sign waivers was against the public policy of Kentucky. The case did say that some waivers may

be valid. The case did not, however, provide much help in deciding when such a waiver would be valid.

Obviously, this case may cause some problems for the race sponsor in Kentucky. To increase the probability that the waiver will be held valid, the waiver should try to clearly describe what the sponsor will not be responsible for. It should also try to inform the runner of the hazards that may be encountered. Even with a carefully drawn waiver the courts in Kentucky may still declare it invalid. If the waiver is declared invalid, it does not automatically mean the sponsor is liable. The sponsor will still be allowed to show that the precautions taken for the race were reasonable. The proof of this reasonable care would still permit the sponsor to avoid paying for injuries a runner suffered.

Spectators

The last possible responsibility of the sponsor is to the spectators. Other sporting events have seen numerous injuries to spectators giving rise to lawsuits filed against promoters. Baseball fans have been hit by balls and bats. Hockey fans have been hit by pucks. Wrestling fans have been hit by whiskey bottles. When these injured spectators have sued, the courts generally require only that the park owners or sponsors use reasonable care to provide safe facilities for their patrons.

Road racing is a different activity. As runners know, racing is a lonely sport. Except for major national races, and perhaps the Louisville, Kentucky Derby Week Mini-Marathon, most races have very few spectators. This absence of spectators simplifies the sponsors problem and reduces his risk of being sued. Moreover, road racers typically do not carry bats, balls, pucks, or whiskey bottles to throw at spectators. Nationally, as well as in Kentucky, there are no reported cases of spectators suing sponsors of road races.

Since some road races block traffic, have crowds, and have motorized emergency equipment, it is possible that spectators could be injured. It would seem that if such a case arose, the sponsor would only be required to use reasonable care for the safety of those involved.



BICYCLE LAWS

Welcome to Life in the Slow Lane

Most bicycle laws in the United States were passed before serious biking became a fact of American life. Consequently, most state legislatures simply included bikes in their laws covering cars and other motor vehicles. Little attention was given to bicycles as a separate and unique class of vehicles. As a result, some vehicle laws that make sense when applied to automobiles are absurd when applied to bikes. Worse yet, some vehicle laws, if obeyed literally by bikers, are actually hazardous. Changes in the law are needed. Special laws tailored to the unique problems of bikes are necessary. But until we have them, we must make do with what we have. What follows is what we have.

Federal Laws

There is very little significant federal regulation of bicycling itself. The most important federal impact is the sponsorship of the Uniform Vehicle Code. The United States Department of Transportation formed a commission to come up with a set of ideal traffic laws. This commis-

sion, after much study, drafted a comprehensive set of model regulations. It is the Uniform Vehicle Code. However, the federal government did not force this new law on the states. It just recommended it. The states were free to ignore it completely. In other words, this is only a model, to be adopted in whole or in part, only if a particular state chooses to do so. The Code is not a law itself.

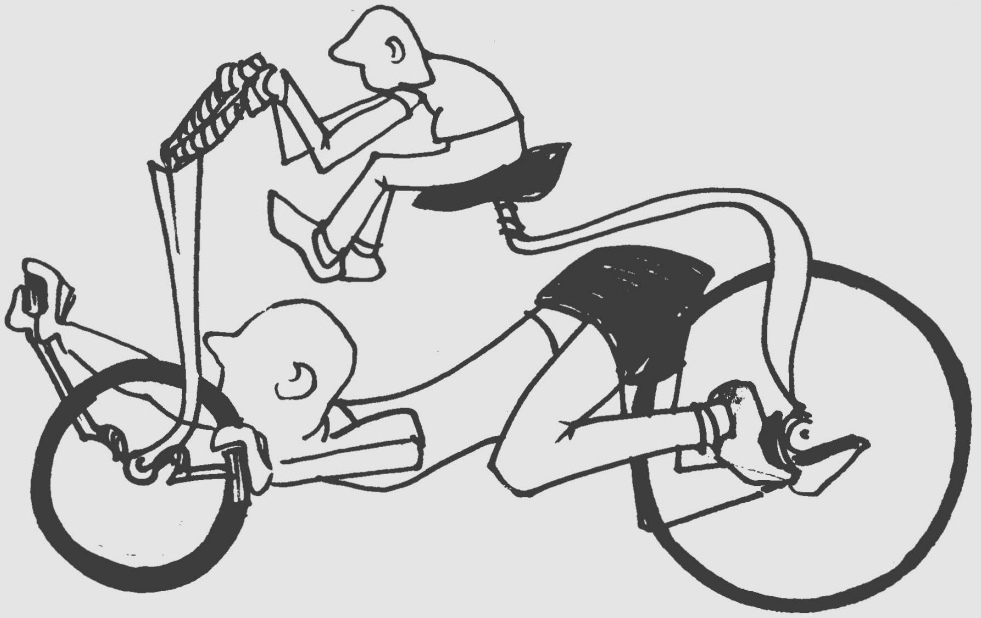
Many states have adopted large portions of the Uniform Vehicle Code. Consequently, as we review the general law of bicycling we will refer to it often. Moreover, even if a particular part of the Code is not in effect in a particular state, the Code provision represents a thoughtful suggestion of how a bicyclist should operate his bicycle.

State Laws

Most laws affecting bicyclists are state laws. And state laws vary from state to state. For example, what may be proper bicycle equipment in one state may be unlawful in another. A proper turn in one state may be unlawful in another. Riding two abreast may be perfectly permissible in one state and against the law in another. As a result of this conflict, it is impossible to say there is a general law of biking. What can be done, and will be done in this book is to give a general overview of state laws. That is, what most states require. Then we will set out the Kentucky law on the subject, pointing out where it differs.

Local Ordinances

The bicyclist must be aware of yet another set of laws: the local ordinances of the cities and counties in which he travels. These ordinances by and large cover local conditions and situations, such as parking, and limited access streets. Because of their very local application, and broad variety, we will only give a few sample provisions. We must leave to the reader the responsibility to check with his local law enforcement agencies for the particular rules applying in his town or city.



What is a Bicycle and, Besides, Who is a Bicyclist?

Most states have a definition of bicycle. The Uniform Vehicle Code at one time defined a bicycle as;

Every device propelled by human power upon which any person may ride having two tandem wheels either of which is more than 14 inches in diameter.

Several states have adopted this definition, and a number of other states differ only on the diameter of the wheels. The Uniform Code now has a new definition of bicycle. It is;

Every vehicle propelled solely by human power upon which any person may ride, having two tandem wheels, except such vehicles with a seat height of no more than 25 inches from the ground when the seat is adjusted to its highest position and except scooters and similar devices.

The reason is obvious. Children should not be required to ride in the streets, as "bicycles" are. So the Code allows the children to ride on sidewalks.

The Kentucky statutes do not define bicycle. The dictionary would probably take over here. The dictionary simply requires two wheels, one behind the other, driven by peddling. All bicycles are vehicles according to Kentucky law and as such are subject to all vehicular laws. However, it is inconceivable that the Kentucky legislature wanted six year old bikers to use public highways. It is also inconceivable that the Louisville ordinance which forbids bicycles on sidewalks was intended to forbid very young children from using small bikes on sidewalks of the city. The law makers simply overlooked the very young biker. Presumably law enforcement agencies will use a common sense approach in the enforcement of these laws.

A bicyclist is someone on and operating a bicycle. When a bicyclist dismounts and walks his bicycle he is a pedestrian, and subject to all the privileges and obligations of a pedestrian. This makes a big difference sometimes. For example, a dismounted bicyclist must leave the highway if a sidewalk is available and use the sidewalk. If no sidewalk is available he must cross the roadway and walk his bike facing-traffic. He can walk but not ride his bicycle through safety zones set aside for pedestrians. And vehicular traffic must defer to the walking-cyclist at intersections as a pedestrian. In other words, a person with a bike has his choice of what law, pedestrian or vehicular, best suits his immediate travel needs.

What the Legally Dressed Bike Will Wear: Bike Equipment Laws

Federal Safety Standards

Extraordinary as it may seem, bicycles have been classified as hazardous substances by the Consumer Product Safety Commission, a federal regulatory agency. The Commission originally sought to regulate only those bicycles “intended for use by children under 16 years of age.” However, the distinction between bicycles intended for use by adults and not children turned out to be an impossible one to draw. The Commission’s answer was to include all bicycles.

Fortunately, the federal law does not apply to the cyclists themselves, but to manufacturers and sellers of new bicycles. Unless new bicycles conform to federal safety standards, they may not be sold without risk of criminal penalties. But no penalties are levied on purchasers or users of nonconforming bicycles. For all intents and purposes, however, federal law effectively controls what safety equipment will be on a new bike. The consumer has no choice!

Federal standards are often more strict than state measures. For example, federal regulations prescribe the type hand brakes, the type wheel and tire construction, and the type chain guards a new bicycle must have. Rather than detail all the various federal requirements, it seems only necessary to point out that the bicycle bought today has been subjected to strict federal regulation.

Unhappily, some federal standards are quite different than the traditional state regulations. For example, the federal law does not require new bikes to have any lights, front or rear! It relies on an intricate arrangement of reflectors attached at various places on the bike to alert motorists to night bicyclists. On the other hand, most states require bikes to have lights for night riding. As a result, a bike may be legal by federal standards and illegal by state rules. And vice versa!

State Regulations

Front Lights: The Uniform Vehicle Code and most states require that any bicycle ridden at night be equipped with a white light visible from a distance of at least 500 feet in front of the bicycle. Several other

states do not refer to the color of the light. And a number of states require a lesser distance of visibility.

A Kentucky bicycle statute states that "bicycles need have only one light in front which will reveal clearly substantial objects at least fifty (50) feet ahead." This light must be turned on one-half ($\frac{1}{2}$) hour after sunset to one-half ($\frac{1}{2}$) hour before sunrise and at other times when atmospheric conditions render visibility as low as or lower than that period.

Rear Lights and Reflectors: Virtually all states require a red reflector on the rear of a bicycle used at night. The laws vary in their requirements of distance of visibility and whether or not visibility distance is measured when the reflection is caused by the high beams or low beams of the following vehicle. The Uniform Vehicle Code adopts a low beam test of visibility of 100 to 600 feet. A number of states, as well as the Uniform Vehicle Code allow the use of a red light in addition to a reflector.

Kentucky law provides that "all vehicles shall display at the rear one (1) red light visible when lighted for at least five hundred (500) feet. A red reflector meeting the requirements may be used in lieu of a red light."

Other Reflectors: A minority of states require bicycle pedals to be equipped with reflectors, and a small number of states require reflective material or devices on both sides of bicycles. Kentucky has no such laws.

Audible Sounding Devices: About half of the states require bicycles to be equipped with a bell or other warning device. Most of these require the device to be audible for at least 100 feet. On the other hand, about half of the states prohibit whistles or sirens to be used by bikers.

The Kentucky law is as follows:

Every motor vehicle and bicycle, when in use on a highway shall be equipped with a horn or other device capable of making an abrupt sound sufficiently loud to be heard under all ordinary traffic conditions. Every person operating an automobile or bicycle shall sound the horn or sound device whenever necessary as a warning of the approach of such vehicle to pedestrians, or other vehicles, but shall not sound the horn or sound device unnecessarily. A bell may be used on a bicycle.

Brakes: A large majority of states require brakes. The Uniform Vehicle Code provides that the braked wheel should be able to skid on

dry, level, clean pavement. Kentucky does not require brakes on bicycles!

Other Kentucky Regulations: Kentucky has no other statutes regulating bicycle equipment. Violators of what few regulations Kentucky does have may be fined between \$20 and \$100 per violation. On the other hand, in 1974 the state legislature empowered the State Department of Transportation to make bicycle regulations and standards. The law states in part;

. . .[I]n promulgating regulations and standards the transportation cabinet shall permit use of light-weight modern technological substitutes for lights, reflectors and bells. The purpose of this section is to encourage bicycling and bicycle touring in this state by enabling bicycle riders to make use of modern technology to make their presence known to other users of the road. The transportation cabinet may consult with organizations of bicycle riders to aid it in the search for bicycle safety equipment and rules convenient for long distance bicycle riders.

To date, the department has not enacted any regulations.

Your Turf: Where Bicycles May Be Ridden

All states allow bicycles on most of their highways and roadways. But with the increased numbers of bike paths and superhighways, bicycles are being banned from some arteries. The Uniform Vehicle Code and a majority of states ban riding on roadways where a usable path for bicycles has been provided adjacent to the roadway. Kentucky does not have such a state law, and unless there is a local ordinance covering the question, bicyclists can choose between the roadway or the bicycle path.

Limited Access Highways (Expressways and Interstates)

States generally have forbidden bicycles from limited access highways, commonly called "expressways" or "interstates." Kentucky law expressly provides that highway authorities of the state, counties, cities, villages and towns may designate what kinds of vehicles may use limited access highways within their boundaries. For example, Louisville City Ordinance § 71.61 provides that no bicycles shall be operated on any limited access highway in the city. Bicyclists must check with the local governing bodies for regulations on these roads.



Sidewalks

Very few states deal with sidewalk bicycling on a statewide basis. Virtually all states leave sidewalk regulations to local authorities. As a result there are many varieties of local ordinances regulating sidewalk use. Some forbid bicycles on sidewalks in business districts, others limit sidewalk riding to children under certain ages and still others simply require bicyclists to yield to pedestrians. Kentucky law has no state statute governing bicycles on sidewalks. Consequently, local ordinances must be checked to determine whether, and under what conditions, bicyclists may use local sidewalks or other areas. The City of Louisville ordinances provide:

§ 74.01 *Operation of Bicycles*

- (A) No person shall operate a bicycle on the sidewalks of the city.
- (B) No person shall operate a bicycle on any section of a public park, playground, play lot, or tot lot, except on a roadway or in a parking area.

In Kentucky communities where sidewalk bicycling is permitted, Kentucky state law requires that the bicyclists “shall exercise due care to avoid colliding with any pedestrian and shall give warning by sounding the horn [bell] when necessary.” Another Kentucky law provides “every person operating . . . a bicycle shall sound the horn or sound device whenever necessary as a warning of the approach of such vehicle to pedestrians. . .” And finally, a bicyclist “shall yield the right of way to any pedestrian on a sidewalk.” Always remember, the pedestrian is the protected species!

The Rules of the Road

Rendering Unto Caesar

Most states require bicycles when operated on a roadway to obey *all* official traffic-control devices applicable to vehicles. Kentucky, by making a bicycle a vehicle, also subjects a biker to all vehicle signals when riding. This means the bicyclist must not only obey traffic lights, but stop signs, no turn signs, and other vehicular signals.

On the other hand, the cyclist can dismount, become a pedestrian and not be controlled as a vehicle. For example, where U-turns are forbidden, a biker may dismount, cross the street according to the rules regulating pedestrians, and resume riding in the opposite direction. He may also walk his bicycle as a pedestrian the wrong way on a one way street if he uses the sidewalk.

Doing Unto Others

Kentucky, like other states, requires;

[T]he operator of any vehicle upon a highway shall operate the vehicle in a careful manner with regard for the safety and convenience of pedestrians and other vehicles upon the highway.

Moreover, Kentucky provides that;

No operator of any vehicle upon a highway shall drive at a greater speed than is reasonable and prudent, having regard for the traffic and for the condition and use of the highway.

In short, bikes can speed as unlawfully as their motorized companions. And bikers have to be as careful as motorists. Besides, there is a fine of \$20 to \$100 for violating these laws.

Doing the "Right" Thing

A large majority of states have specific laws requiring that every person operating a bicycle on a roadway ride as near the right side of the roadway as practicable. These laws do not require bicycles to use the shoulder of the highway. Kentucky has no statutes specifically reg-

ulating where bicycles should be on the highway. However, Kentucky does regulate slow moving vehicles, a category in which bicycles will most often fall. The law provides;

The operator of any vehicle moving slowly upon a highway shall keep his vehicle as closely as practicable to the right hand boundary of the highway, allowing more swiftly moving vehicles reasonable free passage to the left.

Clearly the statute does not require bicycles to leave the roadway and ride on the shoulder of a highway when moving slower than other traffic.

This same law would seem to forbid riding two or more abreast, since each slow moving bicycle is required to be as close to the side of the road as practicable. Other states have not left this issue to conjecture. And the states are in disagreement. Many states have adopted the position of the Uniform Vehicle Code, which provides that persons may ride two abreast, but not more. Other states require single file riding at all times when on a highway. And in Kentucky, local ordinances may require single file bicycle riding. A Louisville city ordinance so provides.

Finally, the law overlooks the issue of one way streets. More specifically, may a bicyclist ride on the extreme left of a one way street as well as the extreme right? Both positions allow passage for faster moving traffic. But Kentucky law literally requires bicycling only on the extreme right of the roadway. (The Uniform Vehicle Code was amended in 1979 to allow biking on the extreme left of one way streets.)

Rites of Passage

As we have seen, a bicycle generally should be ridden on the extreme right of the roadway. This raises the question of whether a cyclist may pass slower moving vehicles on the right. The Uniform Vehicle Code expressly provides that a bicyclist may pass standing or slower moving vehicles on the right. Kentucky has not adopted this provision.

The Kentucky statutes provide that passing should generally be made on the left of the passed vehicle. Passing on the right is permitted only:

(a) When the vehicle overtaken is making or about to make a left turn;

(b) Upon a roadway with unobstructed pavement of suffi-

cient width for two (2) or more lines [Editor's note—the law does not use the word lanes, but lines instead is used] of vehicles moving lawfully in the direction being traveled by the overtaken vehicle.

Kentucky law restricts the shoulder as a passing aid. It provides;

The operator of a vehicle may overtake and pass another vehicle on the right only under conditions permitting such movements in safety. Such movement shall not be made by driving off the roadway unless passing vehicles come to a complete stop and such movement may be made safely.

Of course, experience has shown that bicycles in many cases can safely use shoulders of the highway to pass and it makes no sense to require them to stop before passing. Probably that provision did not contemplate bicyclists. But it refers to vehicles and a bike is such.

Kentucky law also specifically requires bicyclists, when passing, to sound "an audible signal" when necessary for safety.

The Moment of Truth—Turning Left

Perhaps the most dangerous maneuver a bicyclist must make is the left turn. Because the bicyclist will normally be riding in the extreme right of the highway, he must first move over to the extreme left of his lane or lanes. This he must do subject to a law that provides

No person shall turn a vehicle or move right or left upon a roadway unless and until such movement can be made with reasonable safety nor without giving an appropriate signal. . .

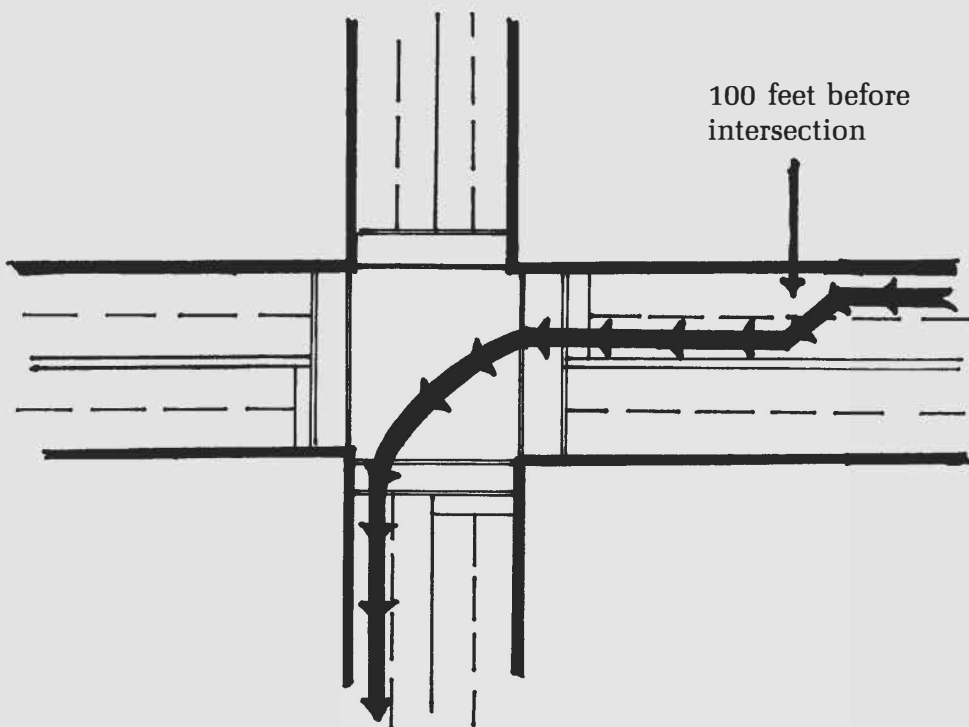
After getting to the left side of his lane or lanes, the Kentucky law requires

A signal of the intention to turn right or left shall be given continuously for not less than the last one hundred (100) feet traveled by the vehicle before turning.

Like most states, Kentucky law requires when signals are given by hand and arm that a left turn be indicated by the left hand and arm extended horizontally. Here is the problem—many bicycles are equipped with hand brakes and the cyclist will often need to use both hands while negotiating his left turn. Unless the law is changed, or not strictly enforced against bicyclists, the bicyclist is placed in an impossible and precarious position.

The Uniform Vehicle Code provides that hand and arm signals do

not have to be given continuously if the hands are needed in the control or operation of the bicycle.



In taking his left turn, the Kentucky law directs

the operator of a vehicle intending to turn left shall approach the turn in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle. Whenever practicable the left turn shall be made to the left of the center of the intersection and so as to leave the intersection or other location in the extreme right-hand lane lawfully available to traffic moving in the same direction as such vehicle on the roadway being entered.

The fine for an illegal turn is \$20 to \$100.

The Uniform Vehicle Code provides a second left turn option for bicyclists. They are permitted to stay in the extreme right lane, cross all the way through the intersection to the extreme right lane of the new road, turn their bicycle there, and proceed (obeying traffic signals if present) on the extreme right of the new road. Kentucky law does not have this provision. But it does not clearly forbid this maneuver. Indeed, this method may be the safest way to negotiate a left turn in congested or large intersections.

One Good Turn Deserves Another: Right Turns, U-Turns and Stops

In Kentucky and the vast majority of states, right turns are the easiest for a bicyclist to make. Most of the time he is already on the extreme right side of the road where he should be for a right turn. A signal by the left hand and arm raised vertically, presumably from the elbow, is required to be given continuously 100 feet before turning. Of course, the same problem of hand brakes and continuous signalling is present here as with left turns. Hopefully law enforcement authorities will not literally enforce the "continuous" aspect of this provision.

A U-turn is permitted to any vehicle provided it can be made safely and without interfering with other traffic. Presumably it would require the same signal as a left turn, although the statutes are not specific on this issue.

If there is a vehicle immediately to the rear of a bicyclist, he must signal his intention to stop or to suddenly decrease speed if he has an opportunity to do so. The signal is with the left hand and arm extended downward.

Racing

The Uniform Vehicle Code forbids the racing of any vehicle on highways. Most states have adopted this position. Not Kentucky, however. Kentucky law provides for a fine or jail term if a person races a motor vehicle. If a person races a horse on the highway, he is subject to merely a fine. But there is no provision forbidding bicycle racing itself. Of course, the law requires safe operation and a reasonable speed by bicyclists, but subject to these restraints, bicycle racing is permitted.

Clinging to Vehicles

The Uniform Vehicle Code and most states forbid persons riding bicycles to attach themselves to any vehicle. Kentucky state statutes do not specifically forbid hitching rides by bicyclists but Kentucky state law still requires safe operation of vehicles on the highway. And there can be little dispute that hitching a ride on another vehicle is dangerous. Local ordinances may cover this practice. For example, a Louisville ordinance provides, "No person while riding a bicycle, coaster sled, roller skates, or any toy vehicle shall cling to any moving vehicle."

Too Many On a Bicycle

Most states and the Uniform Vehicle Code provide that no bicycle shall carry more persons than it was designed to carry. Kentucky does not have a state law on the subject, but local ordinances may provide against overloading bicycles. The City of Louisville provides simply "No operator of any bicycle shall carry another person on such bicycle." The fine is \$6.00 to \$50.00.

Above and Beyond the Law

Few states, if any, require bicyclists to wear helmets. And it is not a violation of Kentucky law to bike without a helmet, but nothing could be safer for a serious biker. Biking gloves may also minimize damage in case of an accidental or intentional spill. Rearview mirrors attached to helmets are not required by law either, but are a manifestly appropriate safety device.

The other side of the coin of using safety equipment is using unsafe equipment. Riding bikes with unsafe brakes, even though Kentucky law does not require brakes on bicycles, may very well prevent recovery if they are a factor in an accident. Indeed, a very dangerous practice is the wearing of headphone radios while running or biking. The sounds of approaching traffic, horns, or the sirens of emergency equipment may very well be drowned out. The law specifically requires vehicles to have and use horns, and a runner or biker with earphones is frustrating the laws, much to his jeopardy.

Miscellaneous: Parking, Accident Reporting, and Insurance

Parking

Generally state legislatures are content to leave bicycle parking regulations to local discretion. Consequently, the local city ordinances vary with local concerns. Some merely forbid parking that interferes with pedestrian movement. Others require cyclists to use bike racks where furnished. And still others dictate very specific no parking regulations for bikes, such as in marked spaces for automobiles, or along buildings or attached to fire hydrants and trees less than ten inches in diameter. The Louisville city ordinance provides in majestic simplicity "It shall be unlawful for the operator of any vehicle to stop or park . . . on a sidewalk [or] . . . on that portion of the public property located between the sidewalk and the curb-line of the street."

Accident Reports

The Uniform Vehicle Code and most states make accident reporting regulations applicable to motorists and bicyclists alike. Kentucky law, unlike other states, requires reporting of accidents occurring on a highway only. The law provides;

Any person operating a vehicle on the highways of this state who is involved in an accident resulting in fatal or non-fatal personal injury to any person or damage to the vehicle rendering the vehicle inoperable shall be required to immediately notify a law enforcement officer having jurisdiction. In the event the operator fails to notify or is incapable of notifying a law enforcement officer having jurisdiction, such responsibility shall rest with the owner of the vehicle or any occupant of the vehicle at the time of the accident. A law enforcement officer having jurisdiction shall investigate the accident and file a written report of the accident with his law enforcement agency.

* * * * *

Any person operating a vehicle on the highways in this state who is involved in an accident resulting in any property damage exceeding two hundred dollars (\$200) in which an in-

vestigation is not conducted by a law enforcement officer shall file a written report of the accident with the department of state police within ten (10) days of occurrence of the accident upon forms provided by the department.

Insurance

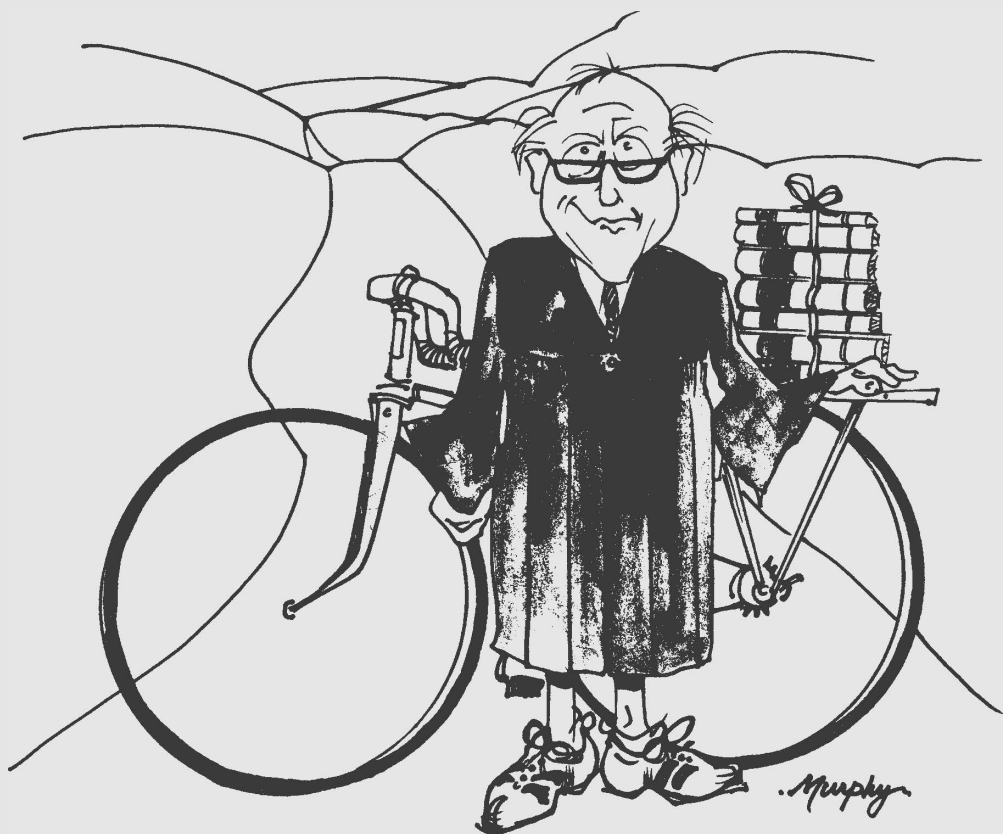
Bicyclists are not required to be covered by no-fault insurance policies as motor vehicles do in Kentucky. If the biker or his household is covered by a standard householder's policy, he may be insured by such policy for damage he inflicts. Obviously, each person should check with his insurer to determine whether or not he or members of his household are insured for injuries caused to third parties by biking.

Afterword

By now the reader should be reasonably aware of the law as it applies to runners and bikers. But we are not trying to train asphalt attorneys. The purpose of this book is not to encourage lawsuits. They are the last resort of settling disputes. On the other hand, we want the reader to know and abide by the law. In doing so, should a lawsuit arise, the law abiding athlete has an excellent chance of success.

And a word to motorists. Just because a biker or a runner is violating the law, it does not mean that it is open season on him. The fact that a jogger or a biker is on the wrong side of the road, doesn't make him fair game to be run over or otherwise abused. The law is quite clear on this. If a motorist can avoid hitting a person, he must, or he becomes responsible even though the person was originally in the wrong.

Perhaps there will come a day when only cars will be on streets, bicycles on bicycle paths, joggers on jogging paths, and pedestrians on sidewalks. But until then, *caveat viator* (latin: let the traveller beware).



Legal Sources and References

INTRODUCTION

A Word About Running and Biking Equipment

For general information about products liability law, one should consult the Uniform Commercial Code Article 2; Restatement 2d of Torts § 402A; *Greenman v. Yuba Power Products, Inc.*, 27 Cal. Rptr. 697, 37 P.2d 897 (1963); *Barker v. Lull Engineering Co.*, 143 Cal. Rptr. 225, 573 P.2d 443 (1978); and *Wilson v. Piper Aircraft Corp.*, 282 Or. 61, 577 P.2d 1322 (1978).

Kentucky law in products liability has an enormous number of sources. For a summary of the area see R. Eades, *Products Liability*,

The Law in Kentucky (Harrison, 1981). The Uniform Commercial Code has been adopted in Kentucky and may be found in Ky. Rev. Stat. Chapter 355. For an example of negligence in products liability see C.D. Herme, Inc. v. R.C. Tway Co., Inc., 294 S.W.2d 534 (Ky. 1956). The proper method of applying strict liability is explained in a Kentucky case involving a flaming T-shirt. Nichols v. Union Underwear Co., Inc., 602 S.W.2d 429 (Ky. 1980). Kentucky also has comprehensive legislation in this area. Ky. Rev. Stat. § 411.300, et seq.

The Medical Examination and Duties of Doctors

For general materials on the doctor's duties, including recommendations by the American Heart Association consult *Exercise Testing and Training of Apparently Healthy Individuals: A Handbook for Physicians* (The Committee on Exercise, American Heart Assoc., New York 1972); A. Halder, *Medical Malpractice Law* (Wily, 1975); *Buttersworth v. Swint*, 33 Ga. App. 602, 186 S.E. 770 (1936).

The Kentucky problems noted in the text can be reviewed in *Mackey v. Greenview Hosp., Inc.*, 587 S.W.2d 249 (Ky. 1979); *Johnson v. Vaughn*, 370 S.W.2d 591 (Ky. 1963).

LAW FOR HIKERS, JOGGERS, AND RUNNERS

Jogger, Runner, Racer = Pedestrian

A few good summaries of the law as it applies to pedestrians are available. Anno., *Failure to Comply with Statute Regulating Travel By Pedestrians Along Highway as Affecting Right to Recovery for Injuries or Death Resulting From Collision with Automobile*, 45 A.L.R.3d 658 (1972); Anno., *Who is a "Pedestrian" with Respect to Rights Given, and Duties Imposed, by Traffic Rules and Regulations*, 30 A.L.R.2d 866 (1953); E. Fisher & R. Reeder, *Vehicle Traffic Laws* 159 (The Traffic Institute, 1974); *Traffic Law Commentary*, Volume 3, Number 3 (1974). The case from Akron, Ohio can be found in *Akron v. Barclay*, 57 Ohio Misc. 17, 386 N.E.2d 269 (1978).

Your Turf: Where to Run

The Kentucky statutes dealing with pedestrians are Ky. Rev. Stat. §§ 189.570, 189.338. The statute limiting the liability of those who permit others recreational use of their private property is Ky. Rev. Stat. § 411.190. The following Kentucky cases will also provide some insight into the issues discussed. *Gravatt v. B.F. Saul Real Estate*, 601

S.W.2d 287 (Ky. 1980) (trespassers); *Chesser v. Louisville Country Club*, 339 S.W.2d 194 (Ky. 1960) (trespassers); *Glasgow Reality v. Metcalf*, 428 S.W.2d 750 (Ky. 1972) (sidewalk); *Jones v. Winn-Dixie*, 458 S.W.2d 767 (Ky. 1970); *Louisville v. Verst*, 213 S.W.2d 517 (1978) (maintenance). A good discussion of the relationship between the responsibilities of motorists and joggers can be found in *Parker v. Windbourne*, 273 S.E.2d 750 (N.C. 1981).

Close Encounters of the Canine Kind

The Louisiana case mentioned in the text can be found at *Reech v. Bodin*, 286 So.2d 477 (La. App. 1974). The Louisville, Kentucky ordinances which regulate control of dogs can be found in sections 90.05 and 90.20. The state materials for Kentucky include several statutes and cases. Ky. Rev. Stat. § 258.005 et seq. See especially § 258.265 and § 258.275. *Johnson v. Brown*, 450 S.W.2d 495 (Ky. 1970); *Dykes v. Alexander*, 411 S.W.2d 47 (Ky. 1967).

Races

For general materials dealing with responsibilities of race sponsors see *Trial Magazine*, pages 27-29, 53-54 (March, 1980) and *New York Roadrunners Club v. State Division of Human Rights*, 81 A.D.2d 519, 437 N.Y.S.2d 861 (1981). The Peachtree Road Race case is *Williams v. Cox Enterprise Inc.*, 159 Ga. App. 333, 283 S.E.2d 367 (Ga. App. 1981). The Kentucky case that deals with releases is *Meiman v. Rehabilitation Center, Inc.*, 444 S.W.2d 78 (Ky. 1969).

BICYCLE LAWS

Welcome to Life in the Slow Lane

The Uniform Vehicle Code may be obtained from the National Committee on Uniform Traffic Laws and Ordinances, 1776 Massachusetts Avenue, N.W., Washington, D.C. 20036.

What is a Bicycle and By The Way, Who Is a Bicyclist?

From the Uniform Vehicle Code.

What the Legally Dressed Bike Will Wear

The leading case involving the legality of various federal bicycle equipment regulations is *Forester v. Consumer Product Safety Comm.*, 559 F.2d 774 (D.C. Cir. 1977). The Uniform Vehicle Code (1968) and

Chapter 189 of the Kentucky Revised Statutes are the sources for the other quoted regulations.

Your Turf: Where Bicycles May Be Ridden

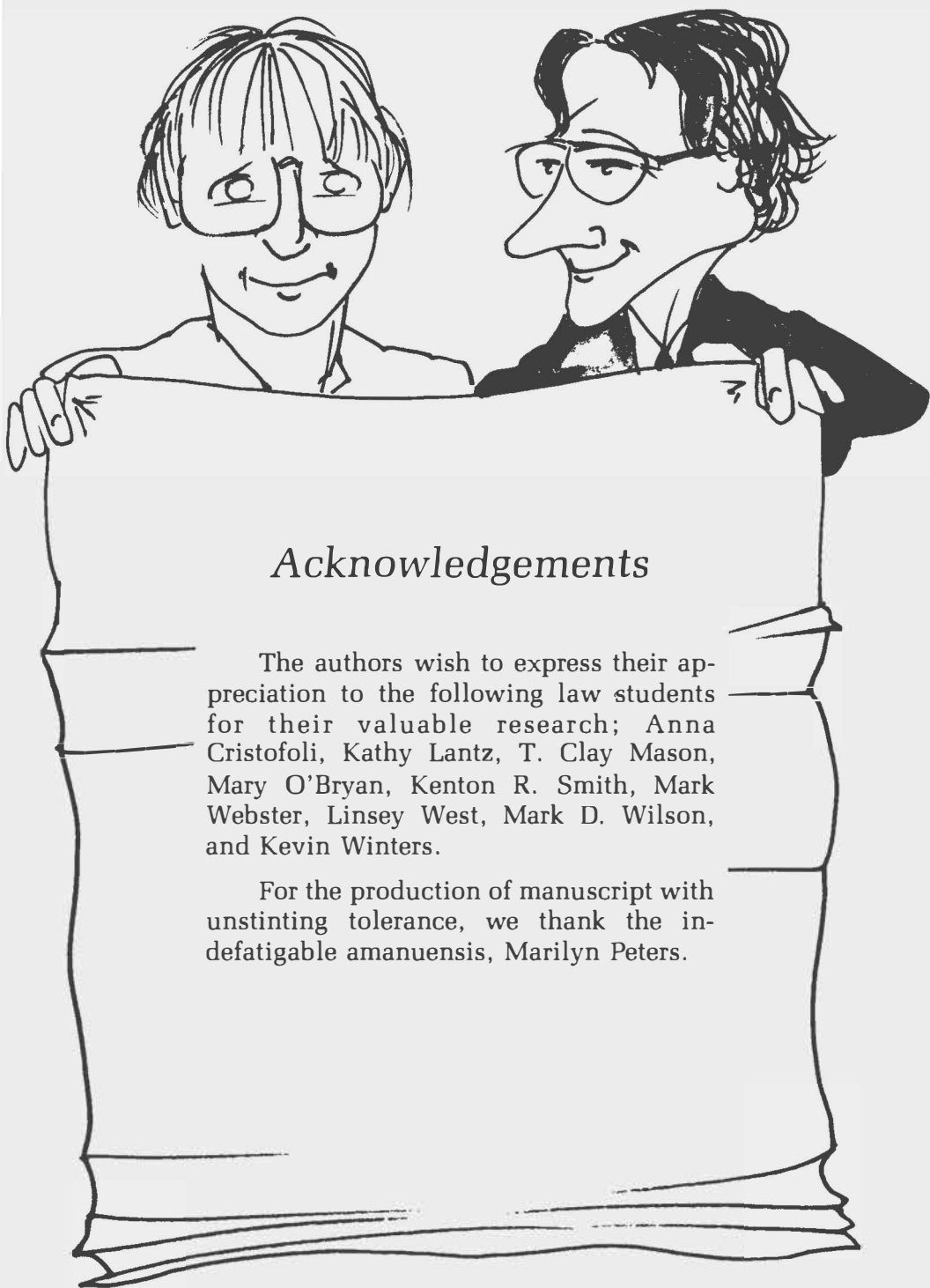
Besides consulting Chapter 189 of the Kentucky Revised Statutes the case of *Foreman v. Western Union Telegraph Co.*, 228 Ky. 330, 14 S.W.2d 1079 (1929) is informative. The case involves a sidewalk cyclist who breaks the leg of a pedestrian.

The Rules of the Road

Chapter 189 of the Kentucky Revised Statutes, the Uniform Vehicle Code and the Louisville city ordinances are the bases for this section.

Miscellaneous: Parking, Accident Reporting, and Insurance

A wide variety of bicycle parking ordinances is collected in *Traffic Law Commentary*, Volume 3, No. 2, pp. 104-108 (1974).



Acknowledgements

The authors wish to express their appreciation to the following law students for their valuable research; Anna Cristofoli, Kathy Lantz, T. Clay Mason, Mary O'Bryan, Kenton R. Smith, Mark Webster, Linsey West, Mark D. Wilson, and Kevin Winters.

For the production of manuscript with unstinting tolerance, we thank the indefatigable amanuensis, Marilyn Peters.

UNIVERSITY OF LOUISVILLE LIBRARIES



U005 25241 359 4



Produced and distributed
by the Greater Louisville YMCA
and the
University of Louisville School of Law.